

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of)	
)	
Application of Ameritech Corporation, Transferor)	
and SBC Communications, Inc., Transferee, for)	
Consent to Transfer Control of Corporations)	CC Docket No. 98-141
Holding Commission Licenses and Lines Pursuant)	
to Sections 214 and 310(d) of the Communications)	
Act Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the)	
Commission's Rules)	
)	
Application of GTE Corporation, Transferor)	
and Bell Atlantic Corporation, Transferee, for)	CC Docket No. 98-184
Consent to Transfer of Control of Domestic and)	
International 214 and 310 Authorizations and)	
Application to Transfer Control of a Submarine)	
Cable Landing License)	

COMMENTS OF MCI, INC.

Pursuant to the Commission's Public Notice,¹ MCI, Inc. ("MCI"), by its attorneys, hereby submits its initial comments in support of the petition for declaratory ruling filed by numerous competitive local exchange carriers ("CLECs" or "Petitioners").² The

¹ See Public Notice, *Wireline Competition Bureau Seeks Comments on Petition for Declaratory Ruling Regarding SBC/Ameritech and Bell Atlantic/GTE Merger Requirements*, CC Docket No. 98-141, CC Docket No. 98-184, DA 04-2974 (rel. Sept. 14, 2004).

² See, Petition of Access One, Inc.; ACN Communications Services, Inc.; Alpheus Communications, L.P. f/k/a El Paso Networks, L.P.; ATX Communications, Inc.; Biddeford Internet Corporation d/b/a Great Works Internet; Big River Telephone Company, LLC; BridgeCom International, Inc.; Broadview Networks, Inc.; BullsEye Telecom, Inc.; Capital Telecommunications, Inc.; Cavalier Telephone, LLC; Conversant Communications, LLC; CTC Communications Corp.; CTSL, Inc.; DSLnet Communications, LLC; Focal Communications Corp.; Freedom Ring Communications, LLC d/b/a Bay Ring Communications; Gillette Global Network, Inc. d/b/a Eureka Networks; Globalcom, Inc.; Integra Telecom, Inc.; Intelcom Solutions, Inc.; KMC Telecom Holdings, Inc.; Lightship Telecom, LLC; Lightwave Communications, LLC; Lightyear Network Solutions, LLC; McGraw Communications, Inc.; McLeodUSA Telecommunications Services, Inc.; Metropolitan Telecommunications, Inc. d/b/a MetTel; Mower Communications Corp.; NTELOS Network, Inc.; Pac-West Telecomm, Inc.; R&B Network, Inc.; RCN

Petitioners argue that the Commission should declare that the incumbent local exchange carrier (“ILEC” or “BOC”) affiliates of SBC Communications, Inc. (“SBC”) and Verizon Communications, Inc. (“Verizon”) remain subject to the unbundling merger conditions required as conditions of approval for their respective mergers.³ MCI agrees.

Verizon and SBC mistakenly state in recent filings⁴ that they are no longer required to comply with the unbundling obligations that stem from the approval of their respective mergers. To the contrary, the unbundling obligation is one of the few merger conditions that remains in effect. As the Petitioners point out, there has yet to be a final, non-appealable Commission or court decision in the *UNE Remand* or *Line Sharing* proceeding. As a result, Verizon and SBC must continue to provide all unbundled network elements (“UNEs”) and UNE combinations pursuant to the *UNE Remand Order* and *Line Sharing Order* until there is a final, non-appealable decision on the Commission’s unbundling rules.

In anticipation of the harm to local competition that would result from the merger of two of the nation’s largest ILECs, the Commission conditioned its approval of the Bell Atlantic/GTE (“Verizon”) and SBC/Ameritech (“SBC”) mergers on certain conditions,

Telecom Services, Inc.; settle, Inc.; TDS Metronome, LLC; US LEC Corp.; and Viscera Communications, Inc. f/k/a Genesis Communications Int’l, Inc. for Declaratory Ruling Regarding SBC/Ameritech and Bell Atlantic/GTE Merger Requirements, CC Docket No. 98-141, CC Docket No. 98-184, (filed Sept. 9, 2004) (“Petition”).

³ *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, 14 FCC Red 14712, FCC 99-279 (1999) (“*SBC/Ameritech Merger Order*”); *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Red 14032, FCC 00-221 (2000) (“*Bell Atlantic/GTE Merger Order*”).

⁴ See, e.g., Michigan PSC, SBC Ameritech Michigan’s submission on performance measurements, reporting and benchmarks in compliance with the October 2, 1998 Order in MPSC Case No. U-11654, Comments of Verizon (filed Jan. 7, 2004); New York PSC, Telecommunications Competition in New York Post USTA II Including Commitments Made in Case 97-C-0271, Verizon Reply Comments (filed April 23, 2004). See also, Letter, dated April 28, 2004, from Jeffrey Ward, Senior Vice President, Regulatory Compliance, Verizon, to William Davenport, Chief, Investigations and Hearings Division, FCC.

including conditions intended to preserve UNE-based local competition.⁵ These unbundling conditions were adopted in order to reduce regulatory uncertainty of the type that is now at issue.⁶ In particular, the Commission mandated, and SBC agreed, that:

SBC/Ameritech shall continue to make available to telecommunications carriers, in the SBC/Ameritech Service Area within each of the SBC/Ameritech States, such UNEs or combination UNEs that were made available in the state under SBC's or Ameritech's local interconnection agreements as in effect on January 24, 1999, under the same terms and conditions that such UNEs or combinations of UNEs were made available on January 24, 1999, until the earlier of (i) the date the Commission issues a final order in its UNE remand proceedings in CC Docket No. 96-98 finding that the UNE or combination of UNEs is not required to be provided by SBC/Ameritech in the relevant geographic area, or (ii) the date of a final, non-appealable judicial decision providing that the UNE or combination of UNEs is not required to be provided by SBC/Ameritech in the relevant geographic area. This Paragraph shall become null and void and impose no further obligation on SBC/Ameritech after the effective date of a final and non-appealable Commission order in the UNE remand proceeding.⁷

For its part, the Commission ordered, and Verizon agreed, that:

Bell Atlantic/GTE shall continue to make available to telecommunications carriers, in the Bell Atlantic/GTE Service Area within each of the Bell Atlantic/GTE States, the UNEs and UNE combinations required in [the UNE Remand and Line Sharing Orders] ... in accordance with those Orders until the date of a final, non-appealable judicial decision providing that the UNE or combination of UNEs is not required to be provided by Bell Atlantic/GTE in the relevant geographic area. The provisions of this Paragraph shall become null and void and impose no further obligations on Bell Atlantic/GTE after the effective date of final and non-appealable Commission orders in the UNE Remand and Line Sharing proceedings, respectively.⁸

⁵ *Bell Atlantic/GTE Merger Order*, ¶¶ 3-4, 246-247.

⁶ *Id.*, ¶316.

⁷ *SBC/Ameritech Merger Order*, Appendix C, ¶53.

Contrary to the claims that SBC and Verizon are making elsewhere, these merger conditions have not expired.

As an initial matter, it is uncontroversial to conclude that the expiration dates of the unbundling merger conditions were not subject to the mergers' general sunset provisions. Unlike the other merger conditions, the unbundling conditions are not subject to the general sunset provision. The general sunset provision explicitly exempts any provision of the merger conditions with its own "termination dates" established therein. By their terms, the merger conditions at issue here have their own termination dates. Thus, the three-year general sunset provision, by its terms, does not apply.

As the Petitioners point out, the merger conditions' expiration dates are triggered by either a final Commission order or a final, non-appealable judicial determination in the *UNE Remand* or *Line Sharing* proceedings. When the Commission adopted these unbundling conditions, it explained that the conditions would apply until there were final decisions from the Commission or the court declaring that Verizon and SBC were no longer required to unbundle UNEs or combinations of UNEs. As a result, the unbundling merger conditions sunset, or "become null and void and impose no further obligation on [Verizon and SBC] after the effective date of a final and non-appealable Commission order in the UNE Remand [] proceeding."⁹

To be sure, these conditions are still in effect *both* because the *UNE Remand Order* never became "final and non-appealable" and because the *Triennial Review*

⁸ See *Bell Atlantic/GTE Merger Order*, Appendix D, ¶ 39 (citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Notice of Proposed Rulemaking, 15 FCC Rcd 39696, FCC 99-238 (rel. Nov. 5, 1999) ("*UNE Remand Order*") and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-96, 14 FCC Rcd 20912 (rel. Dec. 9, 1999) ("*Line Sharing Order*").

⁹ See *Bell Atlantic/GTE Merger Order*, Appendix D; *SBC/Ameritech Order*, Appendix C.

*Order*¹⁰ is clearly a “subsequent proceeding” of the *UNE Remand* and *Line Sharing* proceedings. The *UNE Remand Order* and the *Line Sharing Order* were both reversed and remanded by the D.C. Circuit in *USTA I*¹¹, and the *Triennial Review Order* was the Commission’s order on remand from *USTA I*. The *Triennial Review Order* is expressly captioned as an “Order on Remand” in both the *UNE Remand* docket (CC Docket No. 96-98) and the *Line Sharing* docket (CC Docket No. 98-147).¹² The Petitioners are correct that the *UNE Remand Order* and *Line Sharing Order* were *not* rendered final and non-appealable by the Supreme Court’s denial of certiorari of the D.C. Circuit’s *USTA I* decision. Petitioners accurately point out that the vacated *UNE Remand Order* is not final given that the Court of Appeals remanded it to the Commission for further consideration.¹³ The *USTA II* decision vacated and remanded the *Triennial Review Order*, but *USTA II* cannot be said to be a final, non-appealable decision. Petitions for *certiorari* to the Supreme Court for review of that decision are still pending. The Commission is developing new unbundling rules to comply with *USTA II* in what is also a “subsequent proceeding,” pursuant to the merger conditions.

The unbundling conditions were critical to Commission approval of the Verizon and SBC mergers. It was only after SBC and Verizon offered the unbundling and other

¹⁰ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 18 FCC Rcd 16978 (2003) corrected by errata, 18 FCC Rcd 19020 (2003), *aff’d rev’d, and vacated in part sub nom, United States Telecom. Ass’n v. F.C.C.*, 359 F.3d 554 (D.C. Cir. 2004) (“*USTA II*”), petitions for cert. filed, 2004 WL 1475967 (U.S. June 30, 2004).

¹¹ *United States Telecom Ass’n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

¹² The *UNE Remand Order* and the *Line Sharing Order*, were both issued before the Commission granted the Verizon merger. The Commission could have written the condition to specify that the obligation to offer UNEs would exist until the pending judicial review of the *UNE Remand Order* and the *Line Sharing Order* were final. The Commission, however, did not adopt such language. Instead, it used the same terminology as employed for the SBC merger and tied the expiration of the unbundling condition to a final, nonappealable Commission order. In both mergers, the Commission’s clear intent was to maintain the conditions until final unbundling rules were resolved.

¹³ Petition at 12.

commitments intended to avoid harm to the public interest that the Commission granted the respective mergers. Now, after pledging to the Commission, competitors and the public, to continue to provide access to UNEs until a final resolution, SBC and Verizon are trying to back out of their deal on a most critical issue. These ILECs should honor the terms of their agreement. For its part, the Commission should remain steadfast and enforce the terms of the unbundling condition, as well as other conditions that remain in effect. SBC and Verizon should not be allowed to dictate when and under what circumstances they are required to comply with their merger conditions.

Respectfully submitted,

MCI, Inc.

_____/s /_____
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Dated: October 4, 2004

Certificate of Service

I, Lonzena Rogers, on this fourth day of October, 2004, do hereby certify that I have caused a true and correct copy of MCI, Inc. Comments to be served on the following with respect to a Petition for Declaratory Ruling in the matter of CC Docket No. 98-141 and CC Docket No. 98-184 to be served electronically on the following:

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